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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BRITTANY EASTON,

9 Plaintiff,

10 v.

11 ASPLUNDH TREE EXPERTS, CO.,

12 Defendant.
13 _____

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) CASE NO. C16-1694RSM
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)
) ORDER GRANTING IN PART AND
) DENYING IN PART PLAINTIFF’S
) MOTIONS IN LIMINE
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15 **I. INTRODUCTION**

16 This matter comes before the Court on Plaintiff’s Motions In Limine. Dkt. #56.
17 Defendant does not oppose several of Plaintiff’s motions, but opposes others. Dkts. #56 and #58.
18 For the reasons set forth herein, the Court now GRANTS IN PART AND DENIES IN PART
19 Plaintiff’s Motions In Limine.

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21 **II. LEGAL STANDARD**

22 Parties may file motions in limine before or during trial “to exclude anticipated prejudicial
23 evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40 n.2,
24 105 S. Ct. 460, 83 L. Ed. 2d 443 (1984). To resolve such motions, the Court is guided by Fed.
25 R. Evid. 401 and 403. Specifically, the Court considers whether evidence “has any tendency to
26 make a fact more or less probable than it would be without the evidence,” and whether “the fact
27 is of consequence in determining the action.” Fed. R. Evid. 401. But the Court may exclude
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1 relevant evidence if “its probative value is substantially outweighed by a danger of one or more
2 of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting
3 time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403.

4 **III. DISCUSSION**

5 *1. Attorney-Conducted Voir Dire*

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7 In her first Motion In Limine, Plaintiff seeks an Order allowing one hour of attorney-
8 conducted voir dire. Dkt. #56 at 2. As discussed at the Pretrial Conference, it is this Court’s
9 typical practice to allow attorneys to conduct voir dire. However, the Court will not allow an
10 hour for each party. Instead, the Court will allow the parties 30 minutes each. Accordingly, this
11 motion is DENIED AS MOOT.

12 *2. Exclusion of Defense of Reasonable Reporting Policies and Failure to Report*

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14 Plaintiff next seeks an Order excluding any *Faragher-Ellerth* defense on the basis that
15 Defendant failed to plead such an affirmative defense in its Answer to the Complaint. Dkt. #56
16 at 2-3. Defendant asserts that it is not relying on such a defense; however, it asserts that the facts
17 underlying such a defense are relevant because they rebut claims of a hostile work environment.
18 Dkt. #58 at 2-4. The Court agrees that the subject testimony is relevant and probative to the issue
19 of vicarious liability. Accordingly, the Court DENIES this motion.

20 *3. Evidence of Collective Bargaining Agreement*

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22 Plaintiff next moves to exclude the introduction of, or any reference to, a Collective
23 Bargaining Agreement (“CBA”) in this matter, on the basis that it is inadmissible hearsay and
24 irrelevant. Dkt. #56 at 4. Defendant responds that the CBA is relevant to explaining the
25 corrective action it took with respect to Mr. Mell, and that it should be allowed to reference the
26 CBA for that purpose. Dkt. #58 at 5-6. However, Defendant does not object to excluding the
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1 CBA as an exhibit. *Id.* The Court agrees with Defendant that references to the CBA are relevant
2 to the issue of corrective action, and satisfy the governing Rules of Evidence. Accordingly, this
3 motion is DENIED, except to the extent that neither party will introduce the CBA as an exhibit.

4 *4. Plaintiff's Medical Bills and Records*

5 Plaintiff next moves to exclude Plaintiff's medical records and bills unless such evidence
6 is introduced through a competent medical expert. Dkt. #56 at 4-7. Defendant responds that the
7 records are relevant to its damages defense, that Plaintiff has put her mental health condition at
8 issue in this matter, and that both the medical and expert witnesses expected to testify at trial are
9 qualified to introduce and discuss the records. Dkt. #58 at 6-9. However, Defendant does not
10 object to the exclusion of medical bills. *Id.* at 9. For the reasons discussed by Defendant, the
11 Court agrees that Plaintiff's medical records may be admissible through the identified witnesses
12 and under Rule of Evidence 803(4) and (6). Accordingly, this motion will be DENIED.

13 *5. Prior Lawsuits and Complaints Against Asplundh*

14 Plaintiff next seeks an Order allowing evidence of other lawsuits and complaints against
15 Defendant. Dkt. #56 at 7-8. This motion was addressed on Defendant's Motions In Limine. *See*
16 Dkt. #54. As with Defendant's motions, the Court does not have enough information to make a
17 determination with respect to the proffered testimony. Plaintiff has stated that she is willing to
18 make an offer of proof prior to such testimony. Dkt. #60 at 4. Accordingly, the Court GRANTS
19 this motion, subject to any objection raised by Defendant at the time the subject testimony is
20 offered.

21 *6. Joe Mell Sr.'s Prior Policy Violations*

22 Plaintiff next seeks an Order allowing the introduction of Mr. Mell's prior policy
23 violations. Dkt. #56 at 8. This issue was addressed on Defendant's Motions In Limine. *See* Dkt.
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1 #54 at 5. The Court has already determined that it will not allow such evidence. Accordingly,
2 this motion is DENIED.

3 *7. Evidence of Lack of Prior Incidents*

4 Plaintiff next seeks an Order precluding evidence of a lack of similar incidents by Mr.
5 Mell prior to this lawsuit. Dkt. #56 at 8-9. Defendant responds that this type of information is
6 relevant to defend Plaintiff's claims of negligent hiring, training, supervision and retention, as
7 well as to explain the corrective action taken. Dkt. #58 at 12-13. The Court agrees with
8 Defendant. Further, to the extent that Plaintiff seeks to introduce other purported victims'
9 testimony, such testimony cannot be evaluated at this time due to insufficient information.
10 Accordingly, this motion is DENIED.
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12 *8. Apologies or Expression of Remorse*

13 Plaintiff next moves for an Order excluding any reference to apologies or feelings of
14 remorse on the part of Defendant. Dkt. #56 at 9. Rather than oppose this motion, Defendant
15 responds by requesting evidence from Plaintiff of any such expressions not already produced by
16 Plaintiff. Dkt. #58 at 13. Accordingly, this motion is GRANTED.
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18 *9. Undisclosed Evidence*

19 Plaintiff next seeks an Order precluding the introduction of any previously requested, but
20 undisclosed evidence. Dkt. #56 at 9. Defendant does not object as it does not plan to introduce
21 such evidence. Dkt. #58. Accordingly, this motion is MOOT.
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23 *10. Emails Between Rick Pitt and Shawn Shapiro*

24 Plaintiff next asks the Court to exclude emails between Rick Pitt and Shawn Shapiro on
25 the basis that they are hearsay for which there are no exceptions in this context. Dkt. #56 at 9-
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1 10. Defendant responds that the emails are relevant and admissible business records. Dkt. #58
2 at 13. The Court agrees with Defendant. Accordingly, this motion is DENIED.

3 *11. Testimony Regarding Asplundh's Justification for Plaintiff's Termination*

4 Plaintiff next asks the Court to preclude any testimony regarding Defendant's justification
5 for terminating Plaintiff. Dkt. #56 at 10. The Court addressed this issue on Defendant's Motion
6 In Limine. See Dkt. #54 at 2. On that motion, the Court found that Plaintiff should not be
7 restricted from testifying about the circumstances of her termination from employment. Thus,
8 Defendant cannot be precluded from presenting testimony about the same issue. Accordingly,
9 this motion is DENIED.
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11 *12. Evidence of Convictions, Misdemeanors and Other Bad Acts*

12 Plaintiff next seeks an Order excluding any evidence of her prior criminal convictions or
13 other misdeeds as irrelevant and more prejudicial than probative. Dkt. #56 at 10-12. Defendant
14 responds that this evidence is relevant to the determination of damages. Dkt. #58 at 14-15. The
15 Court disagrees with Defendant. Criminal history is not the same as a history of drug use,
16 particularly in this case where the conviction in question was for conspiracy to transport. The
17 Court GRANTS IN PART this motion and excludes any evidence of prior convictions or arrests.
18 With respect to Plaintiff's history of drug dealing, the Court agrees that information may be
19 relevant to damages in the context of expert evaluations, and will reserve any specific ruling on
20 that history unless and until it is offered at trial.
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22 *13. Plaintiff's Drug Use*


23 Finally, Plaintiff asks the Court to exclude any evidence that she has used illicit drugs in
24 the past, and currently occasionally uses marijuana, on the basis that such evidence is unfairly
25 prejudicial. Dkt. #56 at 12. Defendant responds that such evidence is relevant to Plaintiff's
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1 ability to recover damages for the intentional infliction of emotional distress, and to the expert's
2 opinions, which are based in part on this issue and an evaluation of Plaintiff's mental health. Dkt.
3 #60 at 15-16. The Court agrees that Plaintiff's drug use, unlike any prior conviction, goes directly
4 to her claim for damages and to her mental health, which she has put in issue in this case.
5 Accordingly, such evidence will not be excluded, and this motion is DENIED.
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7 **IV. CONCLUSION**

8 Having reviewed Plaintiff's motions in limine, the opposition thereto, and the remainder
9 of the record, the Court hereby ORDERS that Plaintiff's motions (Dkt. #56) are GRANTED IN
10 PART AND DENIED IN PART as set forth above. Counsel shall inform the parties and their
11 witnesses of the Courts rulings on these matters, and everyone shall abide by them when
12 presenting evidence and testimony during trial.
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14 DATED this 13th day of March, 2018.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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